

APPEAL NO. 043044
FILED JANUARY 20, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 1, 2004. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent's (claimant) compensable injury of _____, extends to an injury to the cervical spine, which includes, but is not necessarily limited to, an aggravation of the claimant's preexisting degenerative disc disease at C4-5 and C5-6; that the compensable injury of _____, does not include a partial thickness tear of the right rotator cuff; and that the claimant is entitled to change treating doctors to (Dr. E) pursuant to Section 408.022. The claimant appeals the hearing officer's determination that the compensable injury does not include a partial thickness tear of the right rotator cuff. The respondent/cross-appellant (self-insured) appeals the hearing officer's determination that the compensable injury extends to an aggravation of the claimant's preexisting degenerative disc disease at C4-5 and C5-6, and also requests correction of a clerical error. Each party filed a response. There is no appeal of the hearing officer's determination in favor of the claimant on the issue of change of treating doctor, which determination was based on a stipulation of the parties.

DECISION

Affirmed as reformed herein.

EXTENT ISSUES

It is undisputed that the claimant sustained a compensable injury on _____, when she was knocked over by a dog. The disputed issue from the benefit review conference on the extent of the compensable injury was whether the compensable injury includes the cervical spine and right shoulder. The self-insured said that it accepted a cervical strain/sprain, but was disputing that the compensable injury extends to any alleged disc problems, defects, or anomalies in the cervical spine and any injury to the right shoulder. Diagnostic testing revealed disc protrusions at C4-5 and C5-6 and a partial thickness tear of the rotator cuff of the right shoulder. The hearing officer considered the conflicting evidence and determined that the compensable injury extends to include an aggravation of the claimant's preexisting degenerative disc disease at C4-5 and C5-6. That determination is supported by the reports of three doctors who have treated or examined the claimant. Several other doctors opined that the cervical injury was limited to a sprain/strain. With regard to the right shoulder, there was evidence that the rotator cuff tear may have been sustained about a month before the compensable injury of _____, and the hearing officer was not persuaded that the fall the claimant had on _____, would cause a rotator cuff tear. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although

there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the issues regarding the extent of the claimant's compensable injury are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). The hearing officer's determinations on the extent issues are affirmed. We note that the hearing officer did make a finding that the claimant did sustain a bruise on the upper portion of her right arm on _____, and that finding was not appealed by the self-insured.

REFORM MATTER

Section 410.164(c) provides that at each CCH, as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. Section 410.204(d) provides that each final decision of the Appeals Panel shall conclude with a separate paragraph stating the true corporate name of the insurance carrier and the name and address of its registered agent for service of process. Section 401.011(27)(D) provides that an insurance carrier includes a governmental entity that self-insures either individually or collectively. Hearing Officer Exhibit No. 2 is the insurance carrier information document and it reflects the information set forth in the concluding paragraph of this decision. The self-insured states in its appeal that the hearing officer made a clerical error in the caption of the case by listing the insurance carrier as TML (Texas Municipal League) Intergovernmental Risk Pool. The self-insured states that it is a self-insured governmental entity, as is reflected in Hearing Officer's Exhibit No. 2, and that TML Intergovernmental Risk Pool is merely a risk pool through which the self-insured's workers' compensation insurance is adjusted and is not the actual entity that provides the insurance coverage for the claimant's injury. The self-insured requests that we amend the caption of the hearing officer's decision to correctly identify the self-insured as the self-insured entity that provides workers' compensation coverage in this matter. In accordance with the self-insured's request and in light of the information provided in Hearing Officer Exhibit No. 2 we agree with the carrier's request and hereby reform the hearing officer's decision to reflect in the caption of the decision that the self-insured is the carrier. We also reform Finding of Fact No. 2 to conform to the information provided in Hearing Officer Exhibit No. 2, and as is listed below.

As reformed herein, we affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge